MOTION FILED

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IN THE

Supreme Court of the United States

October Term, 1982

82-1401

IAIN CALDER and JOHN SOUTH,

Appellants,

v.

SHIRLEY JONES and MARTY INGELS,

Appellees.

ON APPEAL FROM THE CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT

MOTION OF THE AUTHORS LEAGUE OF AMERICA, INC. FOR LEAVE TO FILE A BRIEF *Amicus Curiae*, WITH BRIEF ANNEXED

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MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

The Authors League of America is the national society of professional authors and dramatists, with a membership of 11,000. It respectfully petitions the Court for leave to file the annexed brief *amicus curiae*. One of the League's principal purposes is to express the views of its members in cases affecting authors' freedom of expression under the First Amendment. This is such a case. Affirmance of the decision below would greatly increase the risk that authors of controversial books would be subject to suits for libel or invasion of privacy in jurisdictions far distant from their homes. The additional cost and burden of defending such suits will magnify the "chilling effect" that produces self-censorship, and encourage the institution of such long-arm litigation as a weapon for punishing authors for writing critically, albeit non-libelously, about the disgruntled plaintiff and for compelling authors to suppress expression protected by the First Amendment. Therefore, The Authors League respectfully requests permission to file the annexed brief *amicus curiae*.

Respectfully submitted,

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BRIEF OF THE AUTHORS LEAGUE OF AMERICA, INC. As *AMICUS CURIAE*

INTEREST OF AMICUS CURIAE

The Authors League is the national society of professional writers and dramatists. Many of its members write books which are distributed by publishers, who acquire the exclusive publishing right, throughout the country. The decision appealed from would permit any author to be sued for libel or invasion of privacy in a state where copies of his book were distributed, even though the author resided hundreds or thousands of miles away, and had no contacts with the state that would support such long-arm jurisdiction other than the distribution made by publishers, wholesalers or other third parties. Recognition of long-arm jurisdiction would seriously impair the freedom of expression granted to authors of books under the First Amendment and, we submit, violates the Amendment. Because of the serious threat to authors of books inherent in such a rule, the Authors League files this brief.

ARGUMENT

The First Amendment Prohibits A State From Assuming Jurisdiction Over Non-Resident Authors In Libel Suits Based on Distribution of Their Books, Or Gathering Of Information, Within The State.

(a) The First Amendment Imposes Limitations On Libel Suits to Protect Freedom of Expression

As this Court has emphasized, the First Amendment imposes limitations on suits for libel and invasion of privacy because otherwise authors and publishers "may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or *fear of the expense of having to do so.*" (emphasis added), *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964). Authors and publishers of controversial, and non-libelous, books on matters of vital public interest could bear witness to the searing truth of this observation. Fear of the heavy expense and burden of defending suits for libel or invasion of privacy—even though devoid of merit—frequently leads to the chilling self-censorship of books that this Court sought to prevent in *New York Times* v. *Sullivan* and its progeny. That fear coerces authors and publishers into omitting or deleting from books crucial statements of public interest they believe true and accurate.

(b) First Amendment Limitations Preclude Establishment of Jurisdiction Based on Distribution or Information Gathering

The Authors League submits that the basic First Amendment principle that fear of the expense of defending libel suits should not be permitted to coerce the chilling self-censorship of non-libelous materials prevents states, from exercising long-arm jurisdiction over authors in libel and invasion-of-privacy suits, based on distribution of their books, or gathering of information, within the state. General-interest trade books, first published in hardcover editions, are the primary means of communicating to the public works of biography, history, economic and social commentary, and other literary works on

matters of public interest, as well as new fiction of literary merit. These books are written by self-employed authors, including thousands of Authors League members, who grant the exclusive publishing rights in their works to publishing firms.

One of the most serious threats to the freedom of expression of self-employed book authors is that they might be required to defend themselves against suits for libel or invasion of privacy, no matter how groundless, in the court of another state, hundreds or thousands of miles from the state in which the author resides and wrote the book. The decision appealed from here creates that threat for thousands of authors of books. The burdens and costs of defending these long-arm suits are far greater than suits brought in the jurisdiction where the author resides, including the higher fees of counsel who must be retained to defend in the foreign jurisdiction and the additional fees the author's own counsel may have to charge if he participates in the defense; the costs of travel and lodging in the foreign jurisdiction; and the heavy drain on the free-lance author's time and energy.

The fear of these additional costs and burdens will magnify the chilling effect that produces the self-censorship *New York Times* v. *Sullivan* sought to prevent. It will increase the pressure on free-lance authors to "steer wide" of including information or opinions that might thus drain their resources, even though of value to the public and true. Moreover, the recognition of such long-arm jurisdiction in libel and privacy suits will encourage the institution of such litigation as a means of punishing authors for writing critically, albeit non-libelously, about disgruntled plaintiffs; and as a weapon to compel authors to suppress information protected by the First Amendment. Knowledgeable plaintiffs and their attorneys realize that the greater burdens of defending long-arm suits make authors more vulnerable to their pressures, and more likely to capitulate.

The decision appealed from would permit a plaintiff in any state, or plaintiffs in several states, to establish jurisdiction over the author whose statements affronted them even though the author had no contacts with that state or states. The decision establishes the principle that the author must undergo the additional costs and burdens of defending these long-arm suits for libel or invasion of privacy because a publisher or wholesaler or other third party distributed copies of his/her book in that distant state or states.

This principle will place self-employed authors of books in an impossible situation. Although these authors create and own the copyrights in their works, their publishers invariably acquire—and insist on acquiring—exclusive ownership of all publishing rights in the work. Publishing contracts provide for the transfer of those rights to the publisher, and grant it the sole control over the publication and distribution of the book. The publisher alone determines how many copies will be printed, and the areas in which they will be distributed.

Even if authors wished to reduce the risk of exposure to long-arm litigation over controversial works, they do not have the power to do so. They could not, for example, limit distribution of their books to the major metropolitan areas (in a few states) which account for the great preponderance of sales of hardcover trade books. They could not prohibit distribution of books in the several states in which only a few copies are likely to be sold. The quantities of sales make such limitations theoretically possible . . . the total national sales of most trade books, including those making the most valuable social, political and literary commentary, are measured in the thousands or tens of thousands of copies—not in hundreds of thousands, or millions of copies. But authors do not possess the contractual power to impose those limitations. And it would be an ironic consequence if the recognition of long-arm jurisdiction based on distribution lead publishers to attempt to limit their risks by imposing such unofficial censorship on the readers of many states.

We also submit that the First Amendment guarantee of freedom of expression for authors of books would, for the same

reasons, be violated by a rule which grounded long-arm jurisdiction over an author on his or her telephone calls to a state, or occasional visits to it, solely for the purpose of gathering information. This would inhibit the essential First Amendment process of research.

CONCLUSION

It is respectfully submitted that the decision appealed from should be reversed.

Respectfully submitted,

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Port Chester, N.Y.
June 17, 1983

CERTIFICATE OF SERVICE

IRWIN KARP, a member of the bar of the United States Supreme Court and attorney for The Authors League of America, Inc. hereby certifies that on June 17, 1983, he served the foregoing Motion For Leave To File A Brief *Amicus Curiae* and Brief *Amicus Curiae* of The Authors League of America, Inc. on the attorneys for the parties by mailing copies of said motion and brief to the attorneys at the following addresses:

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